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PTO/SB/61 (05-03)

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

Docket Number (Optional)
59516-217/PP-01568.002

First named inventor: David Duhl

Group Art Unit: 1647

Application Number: 09/602,597

Examiner: Sandra Wegert

Filed: June 22, 2000

Title: HUMAN CHROMOSOME 16 PLASMOLIPIN-LIKE POLYPEPTIDE

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

NOTE: If information or assistance is needed in completing this form, please contact
Petitions Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee—required for all utility and plant applications filed before June 8, 1995, and for all design applications; and
- (4) Adequate showing of the cause of unavoidable delay

1. Petition fee

- ☐ Small entity - fee \$_____ (37 CFR 1.17(l)). Applicant claims small entity status.
See 37 CFR 1.27.
- ☒ Other than small entity - fee \$110 (37 CFR 1.17(l)).

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in
the form of Request For Continued Examination (identify the type of reply):

- ☐ has been filed previously on _____.
- ☒ is enclosed herewith.

B. The issue fee of \$_____

- ☐ has been paid previously on _____.
- ☐ is enclosed herewith.

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This collection of information is required by 37 CFR 1.137(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Mail Stop Petition, P.O. Box 1450, Alexandria, VA 22313-1450.

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OFFICE OF PETITION:

3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$_____ for a small entity or \$_____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, is enclosed.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

July 10, 2003
Date


Signature

Telephone Number: (206) 628-7650

Jane E. R. Potter
Typed or printed name

2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

- Enclosures: ☒ Fee Payment (Deposit Account Charge)
- ☒ Reply (RCE)
- ☐ Terminal Disclaimer Form
- ☐ Additional sheets containing statements establishing unavoidable delay
- ☐ _____

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

- ☐ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.
- ☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 308-6916.

Date

SENT VIA EXPRESS MAIL

Signature

Typed or printed name of person signing certificate

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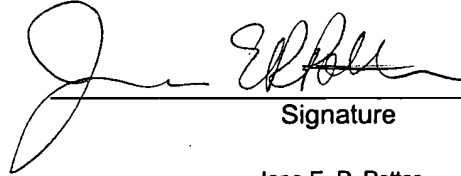
OFFICE OF PETITIONS

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UNAVOIDABLY UNDER 37 CFR 1.137(a)**

NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.

July 10, 2003

Date



Signature

Jane E. R. Potter

Typed or printed name

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply)

On May 31, 2002, the Examiner issued an Advisory Action indicating that the declaration under 37 C.F.R. § 1.132 filed on May 2, 2002, did not place the application in condition for allowance. On October 17, 2002, applicants conducted a personal interview with Examiner Wegert and SPE Elizabeth Kemmerer. The Examiners suggested filing further evidence in support of patentability. This evidence was filed on November 4, 2002. In the response, on November 4, 2002, applicants filed a response under 37 C.F.R. § 116, with an affidavit under 37 C.F.R. § 1.132. Applicants believed that, following the personal interview on October 17, 2002, the Examiner would consider the November 4, 2002 response. However, on February 13, 2003, an Advisory Action was mailed, signed by an SPE who had not participated in the personal interview, nor in the arguments and evidence in the response. Instead, the proposed amendment was not entered.

The present Preliminary Amendment addresses the issues of the non-entered response filed on November 4, 2003. The October 17, 2002 interview and the November 4, 2002 filing were within the time limit set by filing a Notice of Appeal on May 2, 2002. If the Examiner had acted on the case in a timely matter, it would not have gone abandoned. The failure to act was first brought to the applicants' attention on February 13, 2003, when the Office issued an Advisory Action that clearly indicated that the personal interview and the ensuing November 4, 2002 response had not been entered.

Subsequently, a Notice of Abandonment issued on March 11, 2003. Since that time, applicants have investigated why the November 4, 2002 submission was not considered, despite assurances at the October 17, 2002 personal interview that such new evidence would be considered.

In a telephone conference on April 21, 2003, the Examiner indicated that the Advisory Action and subsequent Notice of Abandonment were sent before she had been given a chance to fully consider the November 4, 2002 amendment in the context of the October 17, 2002, personal interview.

The above-referenced application was abandoned due to procedural confusion with the Patent Office.

Should the Commissioner feel that a Petition for Revival-Unintentional would be more appropriate, the Commissioner is hereby authorized to charge an additional \$1190 (\$1300-\$110 already paid) to deposit account number 04-0258.

(Please attach additional sheets if additional space is necessary)